

ST 95-32

Tax Type: SALES TAX

Issue: Tax Collected and Not Remitted  
Book and Records Insufficient  
Unreported/Underreported Receipts (Non-Fraudulent)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
COUNTY OF COOK

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THE DEPARTMENT OF REVENUE ) Docket No.  
OF THE STATE OF ILLINOIS ) IBT #  
 ) NTL No.  
v. )  
 ) Daniel D. Mangiamele  
XXXXXX ) Administrative Law Judge  
 )  
Taxpayer )  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorney, on behalf of Taxpayer; Alan Osheff, Special Assistant Attorney General on behalf of Department of Revenue.

SYNOPSIS: This matter comes on for rehearing pursuant to the taxpayer's timely protest of Notice of Liability XXXXX issued by the Department on June 16, 1994, for Retailers' Occupation Tax. At issue is whether the taxpayer offered sufficient evidence to rebut the Department's prima facie case. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Correction of Returns, showing a total liability due and owing in the amount of \$187,738.00. Dept. Ex. No. 1

2. Taxpayer offered no evidence or testimony into the record.

CONCLUSIONS OF LAW: In the instant case taxpayer's attorney, XXXXX, appeared without his client. Mr. XXXXX stated taxpayer has no evidence to introduced at this hearing and made no objection to the Department's

prima facie case.

Once the Corrections of Returns or Determination of Tax Due were admitted into evidence, the amount of tax and penalty established by said corrected returns was deemed prima facie true and correct. The Department having established its case, the burden shifted to the taxpayer to overcome it by producing competent evidence as identified with taxpayer's books and records. *Masini v. Department of Revenue* 60 Ill. App. 3d 11 (1st Dist. (1978)). In the instant case, no testimony or documentary evidence was proffered on behalf of the taxpayer. Thus, the taxpayer failed to prove the Department's corrected returns incorrect, and the amounts established by said returns, therefore, remain as true and correct.

Based on the foregoing, I recommend that the Correction of Returns be finalized as issued.

Daniel D. Mangiamele  
Administrative Law Judge